

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.
July 3, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 24, 2007

Case Number: TSO-0464

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} The Individual's access authorization was suspended by a local DOE security office. After reviewing the evidence before me, I find the Individual's access authorization should be restored.

I. Background

The Individual is employed by a contractor at a DOE facility. His access authorization was granted in 2004. In August 2005, he self-reported that he had been diagnosed in March 2005 with Bipolar Disorder-type II. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) in March 2006. During the PSI, the Individual stated that, in December 2004, he began seeing a counselor for symptoms of depression. DOE Exhibit 5 at 7 (DOE Ex.).

Following the PSI, the Individual was referred to a DOE consulting psychiatrist (DOE Psychiatrist) for evaluation. In his August 2, 2006 report, the DOE Psychiatrist diagnosed the Individual with Schizoaffective Disorder, Bipolar type. DOE Ex. 3 at 8. One critical element of the diagnosis is delusions prior to the onset of depression. The DOE Psychiatrist found delusions based upon symptoms recorded by a nurse practitioner. Those delusions include hearing the voice of God, believing his life is a movie, and believing the

^{1/} 10 C.F.R. Part 710, Subpart A.

^{2/} 10 C.F.R. § 710.5(a).

government is controlling his life. The DOE Psychiatrist stated in his report that the Individual's Schizoaffective Disorder was currently in remission based on the Individual's regimen of antipsychotic and mood stabilizing medications. *Id.* at 12. However, his report indicated there was a possibility of relapse for two reasons. First, the Individual has a history of medication partial compliance. *Id.* Second, there is a possibility of a recurrence of the Individual's symptoms even while he is on medication. *Id.*

The LSO suspended the Individual's access authorization and issued a Notification Letter to the Individual citing the DOE Psychiatrist's diagnosis as creating a security concern under Criterion H.^{3/} DOE Ex. 1 at 1-2. Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability."^{4/}

Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Director appointed me as the Hearing Officer in this case.^{5/} I convened a hearing in this matter.^{6/} At the hearing, the Individual testified on his own behalf and also offered the testimony of a friend, a co-worker, his mother-in-law, his father, his wife and two doctors. The LSO offered the testimony of the DOE Psychiatrist. The LSO entered 12 exhibits into the record. The Individual entered one exhibit into the record. Below is a summary of the testimony presented at the hearing.

II. Hearing Testimony

A. The Individual

The Individual testified that the delusions outlined in the DOE Psychiatrist's report were based on the nurse practitioner's report. Hearing Transcript (Tr.) at 165. He stated that he was asked by the nurse practitioner if he every felt like anyone was watching him. Tr. at 165. He stated that when he was younger he wondered if the government could have been manipulating his surroundings. Tr. at 165. He stated it was just youthful pondering. Tr. at 165. He stated that it continued through high school and the random thought came back to him when he received his current position for the government. Tr. at 165. When he mentioned the "Truman Show" to the nurse practitioner, he was using that an example of what his pondering about the government watching him had been like. Tr. at 167. He

^{3/} 10 C.F.R. § 710.8(h).

^{4/} *Id.* at § 710.8(h).

^{5/} 10 C.F.R. § 710.25(a), (b).

^{6/} 10 C.F.R. § 710.25(g).

never actually felt he was being filmed. Tr. at 167. The Individual stated that the messages he hears from God are a religious belief. Tr. at 167. He does not hear “some sort of supernatural voices in [his] head.” Tr. at 167.

The Individual testified that has been compliant with his medications. He stated that his only partial compliance occurred when he was prescribed Abilify. Tr. at 166. At the time he received that prescription, he was discussing side effects and other issues about the drug with the nurse practitioner when his session ended. Tr. at 166. Because he did not feel they had finished their discussion, he did not start taking the drug until after his next appointment when he could find out the side effects and how it was going to affect him. Tr. at 166. He has taken all the medications that have been prescribed to him as they have been prescribed to him. Tr. at 166.

The Individual testified that his lifestyle is regular. Tr. at 180. He stated that he can recognize his symptoms of depression and get immediate treatment from his psychiatrist. Tr. at 180. He indicated he would first talk to his wife if he saw his symptoms returning, then he would go back to see his counselor. Tr. at 180-81. He sees his psychiatrist every six weeks. Tr. at 181. He stated that he is not depressed now and that he is happy. Tr. at 183.

B. The Individual's Wife

The Individual's wife testified that she has known the Individual for four years. Tr. at 11. She testified that she suggested to the Individual in December 2004 that he seek counseling because he appeared to be depressed. Tr. at 13.

The Individual's wife testified she was present when the Individual was describing his childhood memories to the nurse practitioner. The Individual's wife testified that the nurse practitioner asked the Individual about his childhood memories but did not appear to understand that the Individual was referring to pondering when he was younger. Tr. at 20. She testified that she believes the Individual did not make his true feelings clear to the nurse practitioner and the session ended before the discussion was finished. Tr. at 20. The Individual's wife stated that the Individual believed it was “God's providence” that he received his job with DOE. Tr. at 21. She testified that it was normal, under their religious beliefs, to communicate with God. Tr. at 21. The Individual does not have visions or hear voices. Tr. at 21. He is a religious man. Tr. at 21.

The Individual's wife testified that he takes his medication regularly without needing to be reminded or coerced. Tr. at 17, 24. Their lifestyle is fairly routine. Tr. at 24. She stays up late studying, but he has a more regular schedule. Tr. at 24. Her family lives nearby. Tr. at 24. He speaks to his family by telephone frequently. Tr. at 24.

C. The Co-Worker

The co-worker testified that he works with the Individual. Tr. at 29. They talk at work, but do not meet outside work. Tr. at 29. He stated that the Individual told him he consulted a psychiatrist. Tr. at 30. He has never seen any delusional behavior from the Individual. Tr. at 31. The Individual handles stress as well as anyone. Tr. at 32.

D. The Friend

The friend testified that he met the Individual at work and they became friends. Tr. at 36. He was the best man at the Individual's wedding. Tr. at 36. They socialize together, approximately every two weeks. They watch movies or go out to eat. Tr. at 40. There is occasionally drinking, but the Individual usually has only one drink. Tr. at 40. He has never seen the Individual do drugs. Tr. at 40. The Individual handles stress well. Tr. at 41. He is logical about approaching a situation. Tr. at 41.

E. The Individual's Mother-In-Law

The Individual's mother-in-law testified that she has known the Individual four years. Tr. at 46. He comes to her house every weekend and spends the afternoon. Tr. at 48. Within weeks of meeting him, she knew he was the man that "I longed for my daughter to marry. He was a gentleman. He was highly intelligent. As one of my friends said, he's practically perfect." Tr. at 48. She admired him for the ability to seek help when he went to the counselor. Tr. at 49. She never saw the Individual as moody or depressed. Tr. at 49. She has never seen anyone his age exercise better judgment than the Individual. Tr. at 52.

F. The Individual's Father

The Individual's father testified that they usually speak a couple of times a week. Tr. at 55. The Individual has a creative imagination. Tr. at 59. He has never had a concern about the Individual's mental health. Tr. at 62-63.

G. The DOE Psychiatrist.

The DOE Psychiatrist testified that he diagnosed the Individual with Schizoaffective Behavior, Bi-polar Type. Tr. at 75. He based his diagnosis on the nurse practitioner's notes. Tr. at 70. He testified that the nurse practitioner's notes indicate that the Individual did have youthful symptoms of delusions. Tr. at 69. The nurse practitioner's notes indicate that the Individual believed he was being watched while in grade school and high school. Tr. at 71. The notes further indicated that the Individual had delusions that he was in a movie. Tr. at 111. The DOE Psychiatrist also testified that the Individual stated to the nurse practitioner that he heard messages from God. Tr. at 108.

The DOE Psychiatrist testified that he is mildly concerned that the Individual is still drinking. Tr. at 120. Drinking alcoholic beverages can cause problems with some of the

medications the Individual is taking. Tr. at 121. He testified that he saw “mild emotional blunting” when he interviewed the Individual. Tr. at 134. The DOE Psychiatrist testified that the medications could have caused that. Tr. at 134-35.

H. The Individual’s Psychologist

The Individual’s Psychologist testified that she met with the Individual two times. Tr. at 140. She testified that she found he had a history of severe depression. Tr. at 143. She testified that the Individual’s pondering about whether he was being watched is normal adolescent behavior. Tr. at 145. She had no concerns about his prognosis in terms of his safety issues at DOE. Tr. at 148. She testified that the Individual’s depression may recur. Tr. at 148. However, his depression does not seem to affect his judgment, self-control, and problem solving abilities. Tr. at 148.

The Individual’s Psychologist testified that the Individual has had suicidal thoughts, but has never formulated a plan. Tr. at 149. His reaction to his depression prior to getting treatment was to drink. Tr. at 149. He does not have a large social network, but does not need one. Tr. at 151. He is self-contained. Tr. at 151. He is not a “party animal.” Tr. at 151. She stated that his prognosis is good. Tr. at 153. He does not hear God speak to him. Tr. at 154. He believes God controls his life. Tr. at 154. He believes he has a close relationship with God. Tr. at 154. He can deal with his issues. Tr. at 157.

I. The Individual’s Psychiatrist

The Individual’s Psychiatrist has been seeing him since December 2006. Tr. at 82. The Individual started seeing him because the nurse practitioner asked for a second opinion. Tr. at 82-83. Based on the DOE Psychiatrist’s report, the Individual’s Psychiatrist found that the Individual had some personality disorder issues. Tr. at 84. However, based on his evaluation of the Individual along with a discussion with the nurse practitioner, the Individual’s Psychiatrist diagnosed the Individual with Bi-polar Disorder. Tr. at 84. Because the Individual had already started medications when he saw him, the Individual’s Psychiatrist stated that his diagnosis was provisional. Tr. at 85. The Individual’s Psychiatrist is considering tapering the Individual off his medications to see how he fares. Tr. at 88. He testified that the Individual has a good prognosis. Tr. at 92. The Individual’s psychiatrist testified that the Individual has been compliant in taking all his medications. Tr. at 94. The Individual’s Psychiatrist stated that the Individual fantasized about the government watching and manipulating events in the past. Tr. at 99. The Individual’s Psychiatrist testified that last episode the Individual related to him occurred in 2003, but that was a momentary thought when he received his job offered from the government. Tr. at 99.

III. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."^{7/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."^{8/}

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.^{9/} After consideration of all the relevant information in the record, I conclude that a significant security concern was raised by the derogatory information. However, for the reasons discussed below, it is my decision that the Individual's access authorization should be restored.

IV. Findings and Conclusions

A. The Diagnosis

In order to determine whether the Individual has mitigated the security concern, I must first determine the appropriate diagnosis. The DOE Psychiatrist diagnosed the Individual as suffering from Schizoaffective Disorder, Bi-polar Type. The Individual's Psychologist diagnosed the Individual as suffering from Depression or Bi-polar Disorder. The Individual's psychiatrist provisionally diagnosed him with Bi-polar Disorder. Tr. at 84.

Schizoaffective Disorder, Bi-polar Type, is a disorder in which there are a combination of independently occurring mood and thought disorder symptoms. DOE Ex. 3 at 12. Individuals diagnosed with Schizoaffective Disorder do not respond to treatment as well

^{7/} 10 C.F.R. § 710.10(a).

^{8/} See 10 C.F.R. § 710.27(a).

^{9/} 10 C.F.R. § 710.7(c).

as those individuals with Bi-polar Disorder. Therefore, the diagnosis of the DOE Psychiatrist is more difficult to mitigate than a diagnosis of Bi-polar Disorder because it is not as easily treated by medication. The DOE Psychiatrist based this Schizoaffective Disorder diagnosis on the delusions found in the nurse practitioner's notes. The DOE Psychiatrist stated that he made this diagnosis because "the delusional symptoms appear before [the Individual had] any mood symptoms." Tr. at 106.

I find more persuasive the diagnosis of the Individual's Psychiatrist and the Individual's Psychologist that the Individual has Bi-polar Disorder. The difference in the diagnosis is that for the schizoaffective diagnosis the clinician must believe the patient has had delusions. The DOE Psychiatrist relied on the nurse practitioner's notes to establish that the Individual had delusions. Both the Individual and his wife testified that the nurse practitioner misunderstood what the Individual said to her. I found the Individual's Psychologist testimony that the Individual has not been delusional to be convincing. She indicated that she frequently sees patients who manifest the Individual's feeling that they are in a movie or television show. She believes such feelings do not constitute delusions. Further, the Individual's Psychiatrist stated that the Individual said he "fantasized" about the government controlling him not that the Individual believed it. Again, he does not believe such thoughts qualify as delusions. As to the claim that the Individual talks to God, both the Individual's Psychologist and Psychiatrist believe he is a religious person. The way he attests his relationship with God is that God speaks to him in different ways. They testified that they do not believe that he actually believes he speaks with God and hears his voice.

Finally, the Individual met with the DOE Psychiatrist one time. He has an ongoing, open, and honest relationship with his psychiatrist. In this situation with the need to understand the context of the Individual's thoughts, I believe his psychiatrist is better able to understand his thoughts. Therefore, I believe the Individual's Psychologist and Psychiatrist better understand the Individual's ponderings. They have spoken directly to the Individual on the matter as opposed to the DOE Psychiatrist, who read the nurse practitioner's notes that describe her discussions with the Individual. Therefore, I believe the Individual's Psychiatrist's diagnosis of Bipolar Disorder is more likely to be correct.

B. Mitigation of Bi-Polar Disorder

Based upon my review of the evidence and testimony presented at the hearing, I find that the Individual presented sufficient evidence to resolve the derogatory information related to his diagnosis of Bi-polar Disorder. In making this finding, I believe sufficient evidence has been presented for me to find that the relative risk of the Individual experiencing an incident of questionable judgment or behavior is low and that if the Individual does have

either a manic or depressive incident, the Individual will behave in a responsible manner and seek help.

Initially, the Individual has received significant counseling from his first counselor and from his current psychiatrist. He certainly has benefitted from that counseling and he continues to be in contact with his psychiatrist. At the hearing, the Individual testified that he takes his medication regularly. His wife, father, and mother-in-law all concurred. He testified that he keeps to a regular schedule. His wife supported that description of his daily schedule. Tr. at 24. He testified that he has a support system if he feels himself losing control. He can call his psychiatrist or counselor. His wife testified that although his family does not live near them, he speaks to them frequently. I believe he would be comfortable speaking to his father, if he believed he were regressing. I believe his father would tell him to contact his psychiatrist.

In prior bi-polar cases, we have found that where an individual follows the prescribed treatment, including taking all prescribed medications, has a strong support system, maintains a regular schedule, and the last episode was over two years prior to the hearing, DOE's security concern is sufficient mitigated. *Personnel Security Hearing*, Case No. TSO-0405, 29 DOE ¶ 82,976 (2006); *Personnel Security Hearing*, Case No. TSO-0363, 28 DOE ¶ 82,943 (2006); *Personnel Security Hearing*, Case No. TSO-0303, 28 DOE ¶ 82,900 (2006). Previously, we have found that even though there is a continuing risk that an individual will experience another depressive episode, the individual's ability to recognize that such an episode is beginning and get help will mitigate that concern. *Personnel Security Hearing*, Case No. TSO-0405, 29 DOE ¶ 82,976 (2006). Further, we have found an individual's adherence to their medication is important. *Id.*

Similarly, in this case, I find that the Individual is following his prescribed treatment by taking all prescribed medications. His only instance of not taking a medication was when he did not believe he had all the information necessary prior to starting it. Secondly, he has a strong support system. His wife initially suggested he go to counseling. He sees his wife's parents on a weekly basis. In my opinion, his mother-in-law would tell him if he were having a problem. In addition, although his parents live across the country, he speaks to them frequently. He also has close friends who support him. Thirdly, he maintains a regular schedule. Finally, his last manic episode was in early 2005, over two years prior to the date of the hearing.

Therefore, I find that the evidence and testimony presented by the Individual overcame the security concerns raised under Criterion H. The derogatory information discussed above has been resolved.

V. Conclusion

Upon consideration of the record in this case, I find the LSO properly raised the concern regarding Criterion H. I find, however, that the Individual has presented adequate mitigating evidence to overcome this security concern. Therefore, I conclude that restoring the Individual's access authorization would not endanger the common defense and security and would not be clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored. The Manager of the LSO or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: July 3, 2007